

ESTATE OF RALPH JAMES STEWARD & ANNE M. STEWARD

IBLA 96-480

Decided September 27, 1996

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring four mill sites null and void for failure timely to answer contest complaint N-60867.

Decision reversed; case referred to Hearings Division; petition for stay denied as moot.

1. Contests and Protests: Generally--Rules of Practice: Government Contests

In accordance with 43 CFR 4.422(d), BLM may extend the time for filing or serving any document in a contest. Where a request for an extension of time to answer a Government contest complaint filed against four mill sites was timely filed with BLM and never acted on, BLM improperly declared the mill sites null and void for failure to file a timely answer to the complaint.

APPEARANCES: Edward G. Marshall, Esq., Las Vegas, Nevada, for appellants.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On May 22, 1996, the Nevada State Office, Bureau of Land Management (BLM), initiated contest No. N! 60867 against Ralph James Steward, charging that four unpatented mill sites (NMC! 697286 and NMC! 707931 through NMC! 707933) were not being used or occupied for mining or milling purposes or otherwise being properly maintained, in accordance with 30 U.S.C. § 42 (1994).

BLM sent the contest complaint by certified mail, return receipt requested, to Steward's last address of record. On May 30, 1996, Anne M. Steward, Steward's wife, signed the certified mail return receipt card and it was returned to BLM. Steward died on June 17, 1996.

In a July 9, 1996, decision, BLM declared the mill sites null and void, pursuant to 43 CFR 4.450-7(a), on the basis that no answer had been

filed, either by Steward or anyone on his behalf, within 30 days after service of the complaint. 1/ Thereafter, on July 15, 1996, Anne M. Steward, Steward's widow, filed with BLM, on behalf of herself and as Special Administratrix of the Estate, an answer to the complaint, denying the allegations. BLM treated the late¹ filed answer as an appeal from its July 1996 decision and transmitted the case file to the Board.

On August 9, 1996, Mrs. Steward filed a "Notice of Appeal" with this Board and petitioned the Board to stay the effect of BLM's July 1996 decision, pending determination of the appeal.

For the reasons set forth below, BLM's decision is reversed and the case is referred to the Hearings Division for a hearing and decision on the contest complaint.

It is clear that, in accordance with 43 CFR 4.450-5, BLM properly served the contest complaint on Steward by delivering it to his last address of record. 2/ This is true regardless of the fact that it may not actually have been received by him. See Terry L. Wilson, 85 IBLA 206, 209, 92 I.D. 109, 111 (1985).

Pursuant to 43 CFR 4.450¹ 6, Steward was required to answer the complaint within 30 days after its service. He did not do so. However, the case record shows that on June 17, 1996, within the 30¹ day period, Edward G. Marshall, Esq., filed a letter dated June 15, 1996, with BLM stating, in relevant part:

I direct your attention to Contest Number N 60867 which purports to be a Complaint filed by the United States against Ralph James Steward.

* * * * * * *

Ralph James Steward has been an occasional client of mine for many years. [3/] He is presently in a convalescent home here

1/ The 30th day from service of the complaint was June 29, 1996, a Saturday. Thus, under 43 CFR 4.22(e), Steward had until Monday, July 1, 1996, to file an answer.

2/ The proceedings in Government contests are governed by the rules in 43 CFR 4.450 relating to private contests, with certain exceptions not applicable herein. 43 CFR 4.451-2. The regulation at 43 CFR 4.450-5 provides, in pertinent part: "The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 4.422(c) [of 43 CFR]." That regulation in turn provides for service, inter alia, by certified mail, return receipt requested.

3/ The nature of the relationship between Marshall and Steward was explained in Marshall's Aug. 5, 1996, affidavit, which appears as part of appellants' notice of appeal: "The late RALPH JAMES STEWARD was a

in Las Vegas and is not expected to live more than a few days, if that long. His death appears to be imminent. * * *

* * * * *

The property affairs of Mr. and Mrs. Steward were separated long ago. * * *

At the immediate moment there is neither an estate nor a guardianship proceeding in place. Imposition and commencement of a guardianship was considered by Mrs. Steward, but the onset of final death throes has come so suddenly that she has decided to await Mr. Steward's death. Then an estate proceeding can be commenced and someone can be appointed in proper authority to respond to the litigation you have commenced. At the present moment * * * [Mr. Steward] is all but comatose 100% of the time and does not communicate at all.

This letter, therefore, constitutes a formal request for additional time to respond to the Complaint. Once legal authority has been conferred upon Mrs. Steward to act, she will be happy to respond officially and formally to the Complaint you have filed. Please DO NOT ATTEMPT DEFAULT herein and please advise me of your response. [Emphasis added.]

According to Marshall's August 5, 1996, affidavit, the June 15, 1996, letter was prepared and sent to BLM at the request of Mrs. Steward. On June 20, 1996, Marshall informed BLM of Steward's death.

On July 9, 1996, BLM issued the decision in question. Mrs. Steward received it on July 16, 1996.

[1] Overlooked by BLM in this case is 43 CFR 4.422(d), which expressly provides that BLM "may extend the time for filing * * * any document in a contest." Such broad authority includes the discretion to extend the time for filing the answer required by 43 CFR 4.450! 6. In this case, Marshall filed a letter with BLM within the 30-day period stating that Stewart was comatose and near death and requesting additional time to respond to the complaint. His August 5, 1996, affidavit

fn. 3 (continued)

client of mine for many years, but always kept very tight control over his legal affairs. * * * I was never on a general retainer with him, but billed him only for hourly work as he occasionally required" (Notice of Appeal at 8). He further stated that he was engaged by Mrs. Steward, following her receipt of the complaint, but advised her that he had no authority to act for Steward in responding thereto since he had not been retained for that purpose and, in his estimation, Steward was non compos mentis, and thus legally incapable of authorizing such representation at that time.

Makes clear that the request was made on behalf of Mrs. Steward, who, in fact, filed an answer on July 15, 1996. Under these circumstances, BLM clearly abused its discretion by ignoring the request filed by Marshall. BLM should have extended the time for filing the answer in this case.

We, therefore, conclude that BLM acted improperly in this case in taking the allegations of the complaint as admitted and declaring the mill sites null and void. See William J. Felix, 114 IBLA 86, 90 (1990). BLM's decision is reversed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is referred to the Hearings Division for a hearing and decision on the contest complaint. 4/ The petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

James L. Byrnes
Chief Administrative Judge

4/ BLM should amend the contest complaint to show the contestees as Anne M. Steward and the Estate of Ralph James Steward.

